IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2667 OF 1995

Yogesh Ramchandra Naikwadi
Occupation Education,
R/a A/716, Abhay Building
Chintamani Nagar, Bibwewadi,
Pune 411 037 .. Petitioner.

Vs.

1. The State of Maharashtra
through its Secretary,
Ministry of Tribal Development
Mantralaya, Bombay 400 032. ..

2. The Director
Committee for Scrutiny and
Verification of Tribe Claims
Maharashtra State,
28, Queen's Garden,
Pune 411 001 ..

3. The Director of Technical
Education, Maharashtra State
Bombay ..

4. The Collector and District
Magistrate, Pune ..

5. The Executive Magistrate
Haveli, District Pune .. Respondents.

Mr.R.K.Mendadkar for the petitioner.
Mr.V.S.Gokhale AGP for respondent nos.1 to 5.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE, JJ.
DATED : MARCH 28, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE, J.)

. The petitioner, who was seeking admission to the Engineering Degree course (B.E) at the relevant time approached us by challenging the order dated 29th March, 1995 passed by the

Committee for Scrutiny and Verification of the Tribe Claims at Pune rejecting his claim that he belongs to Mahadeo Koli, Scheduled Tribe. While granting Rule, interim relief was granted in favour of the petitioner on recording the following reasoning:

> "... ... ... In addition to this, it is pointed out to us that the petitioner's father has filed a writ petition, being Writ Petition No.6005/91 against the decision of the Scrutiny Committee and both these petitions have been admitted and interim orders have been passed therein."
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> 2. Under these circumstances, we grant interim relief to the petitioners in terms of prayer clause (e). However, we make it clear that the admission, is ultimately granted, shall be provisional. We further make it clear that if, ultimately, the petitioner fails in his petition, then he shall not be entitled to take the benefit of this interim order or the benefit of whatever Degrees he may obtain."

2. On account of this interim orders the petitioner was admitted to B.E. degree course and during the pendency of this petition he obtained the said degree. The learned counsel for the petitioner invited our attention to the order passed by this court (Division Bench) on 18.2.2003 in writ petition No.6005/91 which was filed by the petitioner's sister and referred to as well as relied upon while passing the interlocutory order and submitted that the petitioner's degree of B.E.

obtained during pendency of this petition should be protected even if this petition does not succeed. He also relied upon the decision in the case of **Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and Others (1996) 3 Supreme Court Cases 685** in support of his challenge to the impugned order of the Scrutiny Committee. As per him the scrutiny committee failed to consider the documents pertaining to the school admission of the petitioner and his sister as well as near relations and these documents could not have been rejected outrightly. It was further submitted that the petitioner being resident of the Junnar Tahsil, the area which is covered under the Presidential order, he could not have been denied the tribal status, namely, Mahadeo Koli and the committee failed to apply athelic tests.

3. At the outset we must note that the petitioner's real sister - Kum.Anupama had also failed before the scrutiny committee and filed writ petition No.6005 of 1991. While granting Rule in this petition, the interim relief to the extent of directing admission to be given on the basis of her tribes claim was ordered but this Court did not make conditional interim relief inasmuch as it was not said that the admission would be provisional

and the degree course so obtained would be subject to final outcome in this petition. Anupama's writ petition has been dismissed by this court on merits on 18.2.2003 and thus the finding of the scrutiny committee that she does not belong to Mahadeo Koli, Schedule Tribe and that she belongs to Koli caste has reached its finality.

4. The petitioner had submitted in all 27 documents before the Scrutiny Committee and his claim was mainly based on issuance of caste certificate of his father who was in Government service. His father was born on or before 13th April, 1947 and obtained his first certificate of his caste i.e. "Koli" on 26.4.1991 from the Head Master of Jeevan Shikshan Vidyamandir, Narayangaon No.1 and another caste certificate was issued by the Sarpanch of concerned village on 14.8.1990 as well as by the Ex.M.P. Shri Kishanrao Bankhele on 14.8.1990. The petitioner himself obtained xerox copy of the primary school leaving certificate dated 31.5.1987 and that is the earliest document.

5. The documentary proof submitted in support of the caste claim would be of higher probative evidence, if such documents are in respect of the

senior members of the family, namely, father and grand-father etc. The documents in respect of the petitioner and his sister would not have any evidential value as rightly observed by the scrutiny committee as all these documents are subject to verification of the caste claim. The scrutiny committee noted that the petitioner's father's birth extract and primary school leaving certificate, the documents at serial no.1 and 2 before the committee indicated that he belongs to the caste "Koli". In the birth extract the petitioner's father's caste was shown as "Koli" and so was the case in respect of the primary school leaving certificate. Both these documents pertain to the period prior to the first Presidential Order of 1950 notifying a Schedule Tribe and, therefore, both these documents have more probative value of evidence. The wedding invitation cards submitted by the petitioner at serial nos.17 to 21 had no value in evidence. There are some other documents as noted earlier which is a certificate issued by the Ex-member of Parliament and Sarpanch, Village Panchayat and serial no.12 was a service record of the petitioner's Uncle. All these entries in the service record were perhaps based on the caste certificates issued by the Village Panchayat and without any scrutiny of the caste claim.

6. It is also pertinent to note that writ petition No.778 of 1985 filed by the petitioner's father has been dismissed as withdrawn and the tribe claim of the petitioner's sister - Anupama has been held against her and the order of the scrutiny committee has reached finality. Under these circumstances we do not find any reason to hold that the view taken by the committee is contrary to the record or without considering the certificates in respect of the elder members of family or in any way erroneous so as to call for interference in this petition. The order passed in Writ Petition No.6005 of 1991 (sister's petition) has also been taken into consideration by us while deciding the petitioner's claim challenging the order of scrutiny committee. We are also satisfied that there are no other documents on record warranting a fresh enquiry by the Vigilance Cell. When the sister's tribes claim has been rejected, the petitioner cannot now insist that he belongs to "Mahadeo Koli", Schedule Tribe.

7. In the premises, this petition fails and the same is hereby dismissed.

8. The learned counsel for the petitioner in

support of his prayer to protect the petitioner's degree of Bachelor in Engineering relied upon the order passed by this Court in Writ Petition No.6005 of 1991 and the decision of the Supreme Court in the case of **R.Vishwanatha Pillai and State of Kerala and Others [(2004) 2 Supreme Court Cases 105].** The relevant portion of the interlocutory order passed on 22.6.1995 in the instant petition has been reproduced by us hereinabove and not only the admission was made provisional but it was indeed made clear that if the petitioner failed in this petition, then he shall not be entitled to take the benefit of the interim order or the benefit of whatever degree he may obtain. The petitioner had approached us when he was a minor but during the pendency of this petition and while he was a student of the Engineering course he attained majority and it was possible for him to approach this Court for early hearing in this petition so that it could have been decided before he could complete the Engineering degree. This court on 11.9.1996 noted that the office objections were not removed and, therefore, this petition remained pending and conditional order was passed. Ten years later i.e. on 7.2.2006 when the petition came up for final hearing it was noted that the petitioner attained majority and, therefore, he

could not be represented through his father, necessary amendment was sought. In short, the petitioner has to blame himself for the petition remaining pending for more than ten years. We must also take into consideration that the Government of Maharashtra has enacted the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis) Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 - Maharashtra Act No.XXIII of 2001 and published in the Maharashtra Government Gazette with effect from 23rd May, 2001, and the false caste/tribes claims are subjected to criminal prosecution. We, therefore, do not agree with the learned counsel for the petitioner to protect him on the lines recorded in Anupama's case that is in Writ Petition No.6005 of 1991. In the said petition, interlocutory order passed by this court on 28.6.1991 read as under:

> "Rule.
> To be heard alongwith Writ Petition No.5052 of 1991. Interim order in terms of prayer clause (d) and the said prayer clause (d) read as under:
> (d) Pending the hearing and final disposal of this petition, respondent no.4 to the petition, the Dean, B.J.Medical College, we direct not to discontinue the petitioner in college in which she has been admitted pursuant to the order passed by this Court on 20th June, 1991 being Exhibit "D" to the petition."

. Anupama's degree was not made subject to the final outcome in her writ petition. We have also noted that the interim orders were obtained by relying upon the earlier orders in the petitions filed by the family members i.e. father and sister and these petitions came to be dismissed. On the face of these obtaining circumstances in the instant case, we are of the considered view that the petitioner cannot rely upon the decision of the Supreme Court in the case of **R.Vishwanatha Pillai (supra).** The respondent no.3 shall take appropriate steps for the recall of the degree of B.E. obtained by the petitioner on the basis of the interlocutory order dated 29.3.1993 as expeditiously as possible and submit a compliance report to the Registry of this Court within six weeks from today.

9. Rule discharged with costs. Certified copy expedited.

(D.B.BHOSALE, J.) (B.H.MARLAPALLE, J.)